



WP(MD)No.13970 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE G.CHANDRASEKHARAN**

W.P.(MD)No.13970 of 2022

R.Chandra Sekaran

... Petitioner

/vs./

1.The Director,
Backward Classes Welfare,
Chepauk, Chennai.

2.The District Collector,
Thoothukudi Collectorate Campus,
Korampallam,
Thoothukudi District – 625 103.

3.The District Backward Classes Welfare Officer,
Thoothukudi Collectorate Campus,
Korampallam,
Thoothukudi District – 628 103.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 3rd respondent to disburse the monetary benefits such as encashment of Earned Leave and leave on private affairs, Special Provident Fund, Annual periodical incremental arrears of pay and the Special Grade Pay Fixation arrears to the petitioner with interest by considering petitioner's representation dated 14.06.2022.



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For Petitioner : Mr.G.Rajendran
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Mandamus, seeking for a direction to the third respondent to disburse the monetary benefits, such as encashment of Earned Leave and leave on private affairs, Special Provident Fund, Annual periodical incremental arrears of pay and the Special Grade Pay Fixation arrears to the petitioner with interest by considering the petitioner's representation dated 14.06.2022.

2.The learned counsel appearing for the petitioner submitted that a case has been registered against one J.Antony Raj in Crime No.5 of 2013 under Section 7 of the Prevention of Corruption Act, 1988 and in that case, the petitioner was witnessed. The petitioner is also an accused in Crime No.2 of 2014 registered by Vigilance and Anti Corruption, Tuticorin Detachment. Due to the pendency of the criminal proceedings, he was suspended on 26.06.2013. He was permitted to



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retire and has been paid subsistence allowance. There are some statutory amounts due to the petitioner like Earned Leave and leave on private affairs, Special Provident Fund, Annual periodical incremental arrears of pay and the Special Grade Pay Fixation arrears. The petitioner is legally entitled for these amounts in respect of the pendency of the departmental proceedings. In this regard, he submitted a representation to the respondents on 14.06.2022 and has not yet received any response from the respondents. Therefore, this petition.

3.Heard Mr.G.Rajendran, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.

4.The learned counsel appearing for the petitioner places reliance on the order of this Court made in WP(MD)No.198 of 2021 dated 03.03.2021, in which the relevant portion of the order reads as follows:

“2.The learned Special Government Pleader placed reliance on the averments made in the impugned order and submitted that in view of the pendency of the criminal proceedings and the guidelines issued in Fundamental Rules



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56(1)(c), the petitioner's claim cannot be entertained.

3. Such a reasoning in the impugned order cannot be sustained, in view of the various decisions rendered by this Court that the department would not be entitled to withhold the Special Provident Fund and encashment of Earned Leave. In one such decision of the Honourable Division Bench of this Court in the case of the **Secretary to Government, Handlooms, Handicrafts, Textiles and Khadi Department vs G.Devadhas**, passed in **W.A.No.71 of 2017**, the ratio was held as under:

5. It appears that while the respondent was in service as Under Secretary to Government, due to certain irregularities committed by him, he was kept under suspension and subsistence allowance has been paid to him. In the meanwhile, the respondent retired from service on 30.06.2012 and thereafter, in view of the departmental proceedings, provisional pension alone was paid to him from 01.07.2012. In view of non-payment of General Provident Fund, Special Provident Fund and Encashment of Earned Leave/Private Affairs, the respondent has sent a representation requesting to pay the same and the said representation was rejected by the department. Challenging the same, the respondent came up before this Court by filing the above writ petition and the said writ petition was allowed by the



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learned single Judge. Aggrieved over the said order, the State has preferred the present writ appeal.

6. Learned counsel appearing for the respondent has relied on a decision of the Jharkhand High Court reported in 2007 (2) BLJR 2847 [Dr.Dudh Nath Pandey Vs. The State of Jharkhand], wherein, it is held that the Government has no power to withhold Gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It is further held that it does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the proceeding.

7. As far as the case in hand is concerned, only subsistence allowance has been paid to the respondent till 30.06.2012 and subsequently, provisional pension has been paid from 01.07.2012. In view of the above referred decision, we are of the view that the disciplinary proceedings initiated against the respondent may continue. However, since the appellant has got no power to withhold General Provident Fund, Special Provident Fund and Encashment of Earned Leave/Private Affairs, the appellant is directed to settle the same to the respondent, within a period of two months from the date of receipt of copy of this judgment.”



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G.CHANDRASEKHARAN, J.

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Order made in
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Dated:
04.07.2022